



# THE ATTORNEY GENERAL OF TEXAS

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August 30, 1972

Honorable Hugh C. Yantis, Jr.    Opinion No. M- 1202  
Executive Director  
Texas Water Quality Board  
Lowich Building  
Austin, Texas 78701

Re: Whether bonds of Northwest  
Houston Water Supply Cor-  
poration issued pursuant  
to contract with the City  
of Houston under Article  
1109j, V.C.S., as obliga-  
tions of the City under  
Sections 21.601-21.617,  
Texas Water Code are eligi-  
ble for purchase by the  
state, and related questions?

Dear Mr. Yantis:

Your recent request for an opinion states that in 1965 the City of Houston became concerned about the lack of water and sewer facilities in that area adjacent to the City known as Acres Homes. Supported by Resolution of the City Council, three Houston residents were requested to form a non-profit water supply corporation, under the provisions of Article 1434a, Vernon's Civil Statutes,\* to acquire or construct the necessary facilities to service this area.

It apparently was contemplated that the facilities were to be acquired with corporate bond proceeds flowing from a contract with the City of Houston, under the provisions of Article 1109j, whereby the City agreed to purchase the facilities from the non-profit corporation and in consideration therefor was to pay to the corporation periodic amounts necessary to pay off the corporate bond debt. The City would annex that area known as Acres Homes in phases as the various sections were provided water and sewer service. The corporation was organized as the Northwest Houston Water Supply Corporation with all its stock being held in trust by the Mayor of Houston for the benefit of the residents of that area.

It appears that the parties are now in phase three of

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\*All references to Articles are to Vernon's Civil Statutes, unless otherwise stated.

the four phase plan for annexation of the Acres Homes area. Your inquiries with reference to the character of the "corporate obligations" of the Northwest Houston Water Supply Corporation have been paraphrased for purposes of clarity:

(1) Are bonds of Northwest Houston Water Supply Corporation issued pursuant to and supported by a contract with the City of Houston under the provisions of Article 1109j, considered "other obligations" of the City of Houston within the provisions of Sections 21.601 through 21.612 of the Texas Water Code and as such eligible for purchase by the State?

(2) If the bonds of Northwest Houston Water Supply Corporation are not considered "other obligations" of the City of Houston as that term is used in Section 21.602 (6)(7) of the Texas Water Code, would they become so eligible if they were to bear a certificate signed by the Mayor of the City of Houston to the effect that the City is unconditionally obligated to pay the bonds from its ad valorem tax revenues?

(3) Could the provisions of Subchapter I, Chapter 21, Subtitle C of the Texas Water Code (Sections 21.601 - 21.612) be amended so as to include bonds of this non-profit corporation within the term "other obligations of a political subdivision" where the bonds offered for sale to the State are unconditionally secured by a contract with a political subdivision under the provisions of Article 1109j?

Before answering your first question, we must first examine the "legal character" of the parties to that contract hereinabove referred to.

In the case of Tarrant County Water Supply Corporation v. Hurst-Euless-Bedford Independent School District, 391 S.W.2d 162 (Tex.Civ.App. 1965, error ref. n.r.e. 1965) the court specifically held that public utility corporations of the kind here under consideration are

"... not municipal or governmental agencies ... Neither would a corporation formed under the provisions of Article 1434a be a political subdivision." (at p. 163).

On February 15, 1972, this office in Opinion M-1070 specifically held that the Northwest Houston Water Supply Corporation was not a "political subdivision" as that term is used in Sections 21.601 through 21.612 of the Texas Water Code.

There is no question that we are here dealing with two separate legal entities which do not look to each other for their identity or existence. The Northwest Houston Water Supply Corporation, incorporated under the provisions of Article 1434a, is not a part of the City of Houston nor could it be considered as one of its agencies or departments. The relationship which the parties bear to one another would be determined by contract, but we do not believe any such contract could operate to change the "legal nature" of the parties as they existed at the time the contract was made. This same principle would apply to any security which the city or the corporation might contemplate issuing. No contract between the parties could convert a bond, note or warrant of the City of Houston into an obligation of the corporations, nor vice-versa.

It is contended by the attorneys for one of the interested parties that the bonds issued by the Northwest Houston Water Supply Corporation are eligible for purchase by the Texas Water Development Board under Section 21.601, et seq., Texas Water Code, because they are "obligations" of the City of Houston within the meaning of Section 21.602(7). In support of this proposition, the following additional facts and considerations are presented:

"2. Northwest Houston is a non-profit corporation organized under Article 1434a, Vernon's Texas Civil Statutes, at the request of the City, and all of the stock is held in trust by the Mayor of Houston for the benefit of the residents of the City and the residents of the Acres Homes area adjacent to the City.

"3. The corporate charter prohibits dividends

and requires that all profits of the corporation be paid out to the cities, towns, and other entities with whom the corporation does business. No business has ever been conducted except with the City of Houston.

"4. The Mayor and City Council of Houston appoint the corporation's directors, and all of the corporation's actions are submitted to the City for approval.

"5. The basic contract between the City and Northwest Houston Water Supply Corporation, and all supplemental contracts, require the following:

(a) Approval by the Mayor and City Council of the City of Houston of the plan of financing proposed projects;

(b) Approval by the City's Director of Public Works of plans, specifications, and contract documents;

(c) Approval by the Houston City Council of construction bids and proposed awards of construction contracts; and

(d) Approval by the Houston City Council of the resolution authorizing issuance of the bonds.

"6. The contracts obligate the City of Houston to pay directly to the bond paying agent sums sufficient to pay the principal of and interest on the bonds, just as the City does for its own bonds.

"7. The contracts require those payments to be made from a continuing direct annual ad valorem tax on all taxable property within the City, as is the case with general obligation bonds issued by the City.

"8. The City Ordinance authorizing the contracts levies the ad valorem tax required to make such principal and interest payments.

"9. The City Ordinance approving the bond reso-

lution, the interest rates, and the sale of the bonds and authorizing their issuance reaffirms the unconditional obligation of the City to make the payment of principal of and interest on the bonds.

"10. The contracts provide that

'The City's obligation to levy such annual tax and to make the payments on the purchase price as herein provided shall inure to the benefit of the owners and holders of the aforesaid bonds of the company who shall have, in addition to all other remedies at law and in equity, the right to enforce specific performance of the City's obligation to levy such annual payments.'

"11. The contracts, the bond resolutions, and the bonds themselves provide for a pledge of the City's payments to the paying agent bank as security for the bonds. The only security behind the bonds and the sole source of payment of the bonds is ad valorem tax revenues of the City. In addition, the bond resolutions and the contracts specifically refer to rights of the bond holders as against the City in the event of default. It is clear that 'all of the instruments were prepared and entered into in the accomplishment of a single purpose' and must be construed together as one instrument. Guadalupe-Blanco River Authority v. City of San Antonio, 200 S.W.2d 989 (Tex.Sup.1947). Therefore, the City's obligation to pay the bonds from tax revenues is a part of the contract with the bond holders, and the bonds themselves are obligations of the City of Houston.

"12. There is no unconstitutional grant of public money or thing of value, lending of credit, or grant of special privileges. The City is contracting for services it could perform, and indeed is obligated to perform, for itself. . . .

"13. The levy of ad valorem taxes by the City is not a violation of Article 701, Vernon's Texas Civil Statutes. These are not the bonds of the City even though they are obligations of the City. There is no constitutional or statutory requirement for an election to approve the contract or the bonds.

"14. The interest on the bonds is exempt from Federal income taxation under rulings of the Internal Revenue Service.

"15. The bonds are eligible for purchase and unlimited holding by national banks under rulings of the Comptroller of the Currency that the bonds are general obligations of a state or political subdivision."

Article 1109j is express authority for cities to contract with non-profit corporations for the purpose of acquiring, for the benefit of the cities, water distribution and sanitary sewer systems. There is nothing in this act which would indicate that bonds issued pursuant to any such contract would be or should be considered as "obligations" of the cities contracting. The Article in referring to the responsibility of cities under any such contract states:

"Such contract may provide for purchase by the city. . . of such system. . . by periodic payments to such. . . corporation by the city. . . in amounts which. . . will be sufficient to pay the principal of and interest on the bonds of the . . . corporation as they become due." (Emphasis added).

It is clear that the act considers these bonds "corporate" bonds and not "municipal" bonds.

We recognize that it would be to the City of Houston's advantage if the bonds of the Water Supply Corporation were eligible for purchase by the Texas Water Development Board with funds made available through the water "enhancement account" as authorized by Article III, Section 49-d-1 of the Texas Constitution. Sections 21.601 through 21.612 of the Texas Water Code speaks to "bonds or other obligations of a political subdivision" as being eligible for purchase with water quality enhancement funds. Because the water supply corporation is not a political subdivision, their bonds as such are not eligible. Atty. Genl. Opinion M-1070, supra.

We have previously concluded that the bonds issued pursuant to a contract authorized by Article 1109j are the bonds of the corporation and not the City. Where the statute uses the term "other obligations of a political subdivision" it must be construed to have reference to securities of the same

nature or character as bonds (i.e. warrants, certificates of obligation, etc.) and may not be interpreted broadly to include any or all types of obligations of a political subdivision.<sup>1</sup> The fact that the City of Houston has direct "obligations" under a contract with the Northwest Water Supply Corporation pursuant to Article 1109j, is thus not sufficient to make the corporate bonds, issued pursuant to the contract, eligible as "other obligations" of the City of Houston as that term is used in Section 21.602 (6)(7).

In your second question you have suggested that if the bonds of the water supply corporation bear a certificate signed by the mayor of the City of Houston, citing the City's unconditional obligation to pay the bonds, that they then might be considered "other obligations" of the city for water enhancement loan purposes.

We find nothing in our statutes that would authorize the City of Houston to act as an accommodation indorser or surety on the bonds of a separate entity. The authority of the City is one in contract pursuant to Article 1109j, and its responsibilities are contained therein and confined thereto. It is generally recognized that without legislative authority, a city may not legally become a guarantor, indorser, or surety for the payment of bonds or other obligations of another corporate entity. McQuillin, Municipal Corporations, Vol. 15, Section 39.10. As stated earlier in this opinion, we are here concerned with a non-municipal bond, and should the city wish to have outstanding its general obligation bonds to cover the proposed projects, it would be necessary to comply with the requirements of Article 701, which reads, in part,

"The bonds of . . . an incorporated City . . . shall never be issued. . . unless a proposition for the issuance of such bonds shall have been first submitted to the qualified voters. . ."

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<sup>1</sup>Noscitur A. Sociis (It is known from its associates, 1 Vent. 225.) The doctrine means that general and specific words are associated with and take color from each other, restricting general words to sense analogous to less general. 53 Tex.Jur.2d 221, Statutes, Section 154; Farmers' & Mechanics' Nat. Bank v. Hanks, 104 Tex. 320, 137 S.W. 1120(1911); Calvert v. Austin Laundry & Dry Cleaning Co., 365 S.W.2d 232 (Tex.Civ.App.1963 error ref., n.r.e.); Dunham v. State, 140 Fla. 754, 192 So.324, (1939).

One cannot accomplish indirectly that which it has no authority to do in the first instance.

As a matter of information, the proposed contract between the parties covering Phase 3 of the project, which you forwarded to this office as part of your background information, calls for a water supply and distribution system as well as certain sewage facilities, excluding specifically a sewage treatment plant, to be constructed with the bond proceeds.

Even if the bonds were considered bonds of the City of Houston they would still not be eligible for purchase by the Texas Water Development Board, for Section 21.601 does not contemplate their inclusion but specifically states:

"The purpose of this subchapter is to provide for making loans of water quality enhancement funds authorized by Article III, Section 49-d-1, of the Texas Constitution, to political subdivisions of the state for use as state matching funds for obtaining maximum federal grants for the construction of treatment works." (Emphasis supplied).

It is also noted that the proceeds realized from the sale of these bonds must be used in construction of treatment works exclusively, and we are aware of no exception that would include a waterworks system.

Your final question involves the possibility of amending Subchapter I of Chapter 21 of the Water Code to include bonds of such a non-profit corporation as here exists within the term "other obligations of a political subdivision."

While Article III, Sections 50 and 52, Texas Constitution, declares that the legislature has no power to give or to lend or to authorize the giving, lending or pledging of the credit of the state in aid of any person or corporation, whether municipal or other, the courts have held that it does not prohibit the legislature from authorizing a state or governmental agency to use the credit of the state for governmental, public or state purposes. State v. Dallas, 319 S.W.2d 767, affirmed, 160 Tex. 348, 331 S.W.2d 737 (1958); Aransas Pass v. Keeling, 112 Tex. 339, 247 S.W. 818 (1923); Brazos River Conservation & Reclamation Dist. v. McCraw, 126 Tex. 506, 91 S.W.2d 665 (1936); Highway Comm. v. Vaughn, 288 S.W. 875 (Tex.Civ.App.



1926, error ref.); 52 Tex.Jur. 754, State of Texas, Sec. 42.

Under the facts presented, and if a proper statutory enactment were enacted, the City of Houston would be contracting for public governmental services which it may legally perform and for which it is obligated under the law to provide. The contracts call for the improvement and enlargement of specific water and sewage systems owned and to be acquired by the City of Houston and for the benefit of the general public within such City, and in accordance with agreed contractual plans. The parties to the contracts are obligated in quid pro quo contracts. The City is authorized legally to so contract for such a public benefit and governmental purpose, and it therefore does not constitute a grant of money to the non-profit corporation for individual or private purposes or an unconstitutional lending or pledging of credit by the City in aid of the corporation. San Antonio River Authority v. Shepperd, 157 Tex. 73, 299 S.W.2d 920, 928 (1957).

It is therefore our opinion that the provisions of Subchapter I, Chapter 21, Subtitle C of the Texas Water Code (Sections 21.601 - 21.612) could be amended in such a way as to include bonds of such a non-profit corporation within the term "other obligations of a political subdivision" where the bonds offered for sale to the State are unconditionally secured by a contract with the political subdivision under the provisions of Article 1109j. As stated in Attorney General Opinion No. WW-1229(1961), the determination of what constitutes a public governmental purpose "... has been held to be primarily a legislative function subject to review by the courts when abused, and the determination of the legislative body of the matter has been held to be not subject to be reversed except in instances where such determination is palpably and manifestly arbitrary and incorrect. ..." See also in accord, Attorney General Opinion No. C-530(1965), and authorities therein cited, holding that the benefits to the state or governmental entity is in the nature of consideration and that the funds expended or loaned are not an unconstitutional gift or loan even though private persons are benefitted therefrom, and that the courts will look to the character of the use for which the money is expended or loaned, not who receives it. 81 C.J.S. 1148, States, Sec. 133.

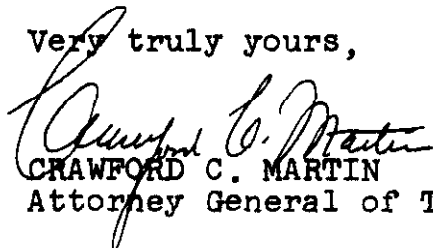
S U M M A R Y

Bonds of the Northwest Houston Water Supply Corporation issued pursuant to and supported by a contract with the City of Houston pursuant to the provisions of Article 1109j, V.C.S., are not to be considered as "other obligations" of the city as that term is used in Subchapter I, Chapter 21 of the Texas Water Code.

A certificate, appearing on the bonds of the Northwest Houston Water Supply Corporation, signed by the Mayor of the City of Houston to the effect that the City is unconditionally obligated to pay said bonds from ad valorem tax revenues of the City, is not sufficient to render such bonds "other obligations" of such city as that term is used in Subchapter I, Chapter 21 of the Texas Water Code.

A proper statutory amendment to Subchapter I, Chapter 21 of the Texas Water Code which would include bonds of such a non-profit corporation as herein described, and under the facts and conditions presented, within the term "other obligations of a political subdivision" as used in said Chapter could be upheld as not in contravention of Article III, Sections 50 and 52 of the Texas Constitution prohibiting the lending of credit to any individual, association or corporation.

Very truly yours,

  
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